Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1855

ROSS CATES, INDIVIDUALLY, AND AS NATURAL TUTOR OF HIS MINOR SON, LARRY G. CATES,

Petitioner,

versus

BEAUREGARD ELECTRIC COOPERATIVE, INC. and CECIL RIBBECK,

Respondents.

MEMORANDUM FOR BEAUREGARD ELECTRIC COOPERATIVE, INC. IN OPPOSITION

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Respondent, BEAUREGARD ELECTRIC COOPERATIVE, INC., successfully moved for summary judgment, resulting in the dismissal of petitioners' suit for damages arising out of the alleged electrocution of LARRY CATES, one of the petitioners, when he climbed one of respondent's poles and contacted the primary conductor at an elevation of 28 feet 4 inches. The judgment of the Trial Court was affirmed by both the Third Circuit Court of Appeal and the Supreme Court of the State of Louisiana, on the

ground that there was no genuine issue or material fact concerning the negligence of LARRY CATES in climbing the pole. Petitioners now, for the first time during the course of the litigation, attempt to raise constitutional questions.

The issues presented by petitioners are: whether dismissal by summary process violates procedural due process, guaranteed by the Fourteenth Amendment, by denying trial on the merits; and whether the doctrine of contributory negligence violates an individual's right to equal protection of the law, guaranteed by the Fourteenth Amendment, by barring recovery for injured persons contributing to their own misfortunes.

Respondent first submits that petitioners' application should be denied under Rules 19 and 23 of this Honorable Court, since the federal questions sought to be reviewed were not raised in the state courts. This Court has consistently held that it will not decide federal constitutional issues raised before it for the first time on review of state court decisions. See *Cardinale vs. Louisiana*, 89 S.Ct. 1161, 394 U.S. 437, 22 L.Ed. 2d 398, and authorities cited therein.

The first issue presented by petitioners, whether summary judgment violates a non-moving party's right to trial on the merits, was disposed of by this Court in *Fidelity & Deposit Co. of Maryland vs. U. S. to Use of Smoot*, 23 S.Ct. 120, 87 U.S. 315, 47 L.Ed. 194. The second issue, concerning the constitutionality of the doctrine of contributory negligence, is also without merit, since that doctrine has been recognized by this

Court and the other courts of the United States since the birth of this nation.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing brief has been served upon opposing counsel of record by placing the same properly addressed in the United States Mail with adequate postage affixed thereto this ____ day of July, 1976.

Of Counsel